

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

CRL.A.No. 215 of 2004()

SC.154/2000 of ASSISTANT SESSIONS COURT, PAYYANNUR
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APPELLANT: ACCUSED

K.SAJI @ CHACKO,
S/O. PAPPACHAN @ GEERVARSEAS, POOPARAMBA,
ERUVASSY.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.GEORGE SEBASTIAN

RESPONDENTS: COMPLAINANT

STATE - (C.I.OF POLICE ALAKODE),
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 20/12/2006, THE COURT ON 09/01/2007 DELIVERED THE
FOLLOWING:

V. RAMKUMAR, J.

Crl. Appeal NO. 215 of 2004

DATED: 09-01-2007

JUDGMENT

In this appeal filed by the accused in S.C. 154/2000 on the file of the Assistant Sessions Court, Payyannur, for an offence punishable under Sec. 376 I.P.C., he challenges the conviction entered and the sentence passed against him for the aforementioned offence. The appellant was charge-sheeted by the Circle Inspector of Police, Alakkode.

2. The case of the prosecution can be summarised as follows:-

On 21-10-1998 at about 8.50 a.m. from the lean-to of the house of P.W.1 bearing building No. IV/426 of Eruvassy Panchayath the accused committed rape of P.W.1 aged 14 years who is the younger sister of the wife of the accused. The accused has thereby committed the offence of rape punishable under Sec. 376 I.P.C.

3. On the accused pleading not guilty to the charge framed against him by the court below for the aforementioned offence the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 11 witnesses as P.Ws 1 to 11 and got marked 14 documents as Exts. P1 to P14 and 5 material

objects as MOs 1 to 5.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. Since the court below did not consider this a fit case for recording an order of acquittal under Sec. 232 Cr.P.C. the accused was called upon to enter on his defence and to adduce any evidence which he might have in support thereof. The accused examined two witnesses as DWs 1 and 2.

6. The learned Addl. Sessions Judge after trial, as per judgment dated 17-10-2003 found the appellant guilty of the offence charged against him and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 25,000/- and on default to pay the same, to undergo rigorous imprisonment for one more year. It is the said judgment which is assailed in this appeal.

7. I heard Advocate Sri. Gracious Kuriakose, the learned counsel appearing for the appellant and Adv. Sri. Sivakumar, the learned Public Prosecutor who defended the State.

8. The only point which arises for consideration in this appeal

is as to whether the conviction entered and the sentence passed against the appellant are sustainable or not ?

THE POINT:

9. What is unravelled by the oral and documentary evidence adduced by the prosecution is the following:-

P.W.1 (Bini) who was aged 20 years on the date of her examination in Court on 4-3-2003, was the younger sister of the wife of the accused. P.W.1 was then aged 14 years and studying in VIII standard. On 21-10- 1998 the mother (PW2) and elder sister of P.W.1 left for Kannur in connection with a job for her elder sister. On their way they saw the accused standing at Poopparamba junction. Seeing the accused there it instantly occurred to P.W.2 that P.W.1 was alone in the house. P.W.2 sent a neighbour by name Shijo to her house to ask P.W.1 not to stay in the house but to immediately go to school. Shijo, came and told P.W.1 to go to School immediately. Accordingly P.W.1 closed the front door of the house and went to the lean to of the house for keeping the key. The accused who was hiding near the door of the lean - to caught hold of P.W.1. dragged and pushed her into the lean - to. When she tried to cry he gagged her mouth with his hand and inserted cloth into her mouth. She was then forcibly taken and laid on the floor after spreading the cloth

worn by the accused. He then rolled her skirt and petticoat up and after removing her underwear he forcibly ravished her during the course of which he squeezed her breasts and bit her lips causing a bleeding injury. There was blood on her skirt and petticoat and she suffered excruciating pain. At about 4 p.m. when her mother returned in the evening she narrated her traumatic experience weeping. This in short is the occurrence.

10. P.W.2 is the mother of the victim.

11. P.W.3 is an attester to Ext.P2 scene mahazar.

12. P.W.4 is an attester to Ext.P3 seizure mahazar regarding the dress of P.W.1.

13. P.W.5 is a neighbour who had taken the girl to the hospital.

14. P.W.6 is an attester to Ext.P4 seizure mahazar pertaining to the recovery of MO4 lungi of the accused.

15. P.W.7 is the A.S.I. who registered Ext.P7 F.I.R. P.W.8 is a doctor who examined the accused and proved Ext.P8 potency certificate. He also proved Ext.P10 wound certificate of P.W.1 issued by the doctor who had examined her and who was not available during trial.

16. P.W.9 is the Village Officer who proved Ext.P9 scene plan.

17. P.W.10 is the headmaster of the School where P.W.1 was

studying and he proved Ext.P11 certificate to prove the age of the victim.

18. P.W. 11 is the Circle Inspector who conducted the investigation.

19. D.W.2 is the accused himself. According to him he was falsely implicated by P.W.1 and others as he had caught her red-handed while she was having physical relationship with her lover. DW1 is the alleged lover of P.W.1. He, however, did not support the accused.

20. After an anxious consideration of the oral and documentary evidence of the case, I have no hesitation to hold that the conclusion reached by the court below is fully justified. The trial judge who had the unique advantage of seeing the witnesses and assessing their credibility has chosen to believe the prosecution witnesses, particularly, P.W.1, the victim. I do not find any infirmity in the appreciation of evidence by the learned trial Judge. The conviction was rightly entered against the appellant/accused. However, the sentence of rigorous imprisonment for 10 years was slightly on the higher side. The appellant appears to have already undergone imprisonment for 8 years and two months, I am of the view that the sentence of imprisonment for 8 years will suffice for the

offence committed by him. Accordingly, the sentence of imprisonment is reduced from 10 years to 8 years. But the monetary portion of the sentence imposed by the court below, is, however, not interfere with.

From out of the fine amount of Rs. 25,000/- as and realised, a sum of Rs. 20,000/- shall be paid to P.W.1 by way of compensation under Sec. 357 (1) Cr.p.C.

This Crl. appeal is dismissed confirming the conviction but slightly modifying the sentence as above.

V.Ramkumar,Judge.

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